UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re:	)	
GREYSTONE PHARMACEUTICALS, INC.	)	Case No. 09-32236-PJD
	)	
Debtor.	)	Chapter 11

DEBTOR'S THIRD MOTION FOR AUTHORITY TO INCUR SECURED POST-PETITION FINANCING AND REQUEST FOR EMERGENCY HEARING

COMES NOW Greystone Pharmaceuticals, Inc. ("Debtor" or "debtor-in-possession"), pursuant to §§ 364(c)(1), (2) and (3), and § 364(d)(1) of the United States Bankruptcy Code (the "Code") and the Federal Rules of Bankruptcy Procedure 4001(c), hereby moves for entry of an order in substantially the form of the order attached hereto as Exhibit A, (a) authorizing the debtor-in-possession to incur secured post-petition financing on an interim and final basis from Marque Millennium Capital Management LLC ("MMCM"); and (b) scheduling the final hearing on an emergency and expedited basis. In support of its Motion, Debtor respectfully states as follows:

JURISDICTION

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408, 1409.

BACKGROUND

3. On November 2, 2009, the Debtor filed its voluntary petition herein under Chapter 11 of the Code.

4. The Debtor is operating its business and managing its property as debtor-in-possession pursuant to §§ 1106, 1107 of the Code.

5. Greystone is in the business of developing, manufacturing and marketing medical products containing the company's intellectual properties and processes.

6. The Debtor has offices in Memphis and Fort Myers, Florida.

7. A Committee of Unsecured Creditors was appointed on March 23, 2010.

8. This Court has previously allowed Debtor to obtain post-petition financing.

9. Pursuant to an Order of the Bankruptcy Court dated December 12, 2009, the Bankruptcy Court approved DIP financing from BLN Capital Funding, LLC ("BLN") on a final basis in an aggregate amount of $150,000 with the option of advancing up to $250,000. Prior to the commencement of its bankruptcy, the Debtor was indebted to BLN in the approximate amount of $1.1 million, exclusive of interest, fees, attorneys' fees, costs, expenses and other charges provided for under the loan documents. As of the petition date, BLN asserted that it held and continued to hold valid and perfected first-priority liens and security interests in and to, among other things, all or substantially all of the personal property of the Debtor. The BLN post-petition funding constitutes a superpriority administrative expense that, subject to certain exceptions is secured by: (a) senior priming perfected liens pursuant to § 364(d)(1) of the Code on all of the personal property of the Debtor's estate ("Collateral") which, on the petition date, was subject to existing valid and perfected senior liens or security interests of BLN or Steel Warehouse; (b) first and prior perfected liens pursuant to 11 U.S.C. § 364(c)(2) on the post-petition Collateral, if any, which was not subject to perfected liens or security interests on the Petition Date; and (c) junior perfected liens pursuant to 11 U.S.C. § 364(c)(3) on post-petition Collateral which, on the Petition Date, was subject to a valid, perfected and unavoidable lien. The amount of funding advanced by BLN was $230,000.

10. Pursuant to an Order of the Bankruptcy Court dated April 29, 2010, the Bankruptcy Court approved secondary DIP financing from First Texas Medical Partners, LLC ("First Texas") on a final basis in an aggregate amount not to exceed $300,000. The First Texas funding constitutes a superpriority administrative expense that, subject to certain exceptions is secured by: (a) senior priming perfected liens pursuant to § 364(d)(1) of the Code on the post-petition Collateral which, on the Petition Date, subject to valid and perfected senior liens or security interests of BLN or Steel Warehouse; (b) first and prior perfected liens pursuant to 11 U.S.C. § 364(c)(2) on the post-petition Collateral, if any, which was not subject to perfected liens or security interests on the Petition Date; and (c) junior perfected liens pursuant to 11 U.S.C. § 364(c)(3) on post-petition Collateral which, on the Petition Date junior only to the lien of BLN, was subject to a valid, perfected and unavoidable lien. All liens granted to First Texas are junior to the prior liens of BLN. In addition, for making the funding available, First Texas receives an equity interest in the Reorganized Debtor equal to one-half of one percent (.5%) and an additional one-half of one percent (.5%) if the Debtor draws more than $150,000. First Texas has funded approximately $205,000 for working capital and necessary operating expenses of Debtor but its funding is deemed frozen at its current outlay of $205,000.

RELIEF REQUESTED

11. MMCM is willing to lend money to the Debtor, as debtor-in-possession, on the terms and conditions set forth in this Motion, and in the Order attached hereto as Exhibit A.

12. The proposed debtor-in-possession financing Order attached contains the following essential terms, among others:

(a) MMCM will provide initial emergency funding in the amount of Ninety Thousand Dollars ($90,000) to the Debtor to be used immediately for general operating expenses, including but not limited to "Director's and Officer's Liability Insurance."

(b) MMCM will also make available a Line of Credit up to a maximum of Seven Hundred Fifty Thousand Dollars ($750,000.00), subject and conditioned upon MMCM's receipt of requested financial documents, due diligence and written authorization;

(c) in return for the Line of Credit, MMCM will receive certain non-refundable fees as set forth in the loan agreement documents executed by the parties;

(d) the Line of Credit will bear a fixable interest rate of twelve and three quarters of one percent (12.75%) per annum, and will be repayable based on the terms and conditions of the loan documents.

(e) to secure repayment of the debtor-in-possession loan, MMCM will receive (i) a priority under § 364(c)(1) of the Code, (ii) a senior lien pursuant to § 364(c)(2) of the Code on property of the estate (other than avoidance actions) that is not otherwise subject to a lien, (iii) a junior lien pursuant to § 364(c)(3) of the Code on property of the estate (other than avoidance actions) that is subject to valid, perfected and unavoidable liens, and (iv) a lien junior to BLN and First Texas but senior to all other liens pursuant to § 364(d)(1) on property of the estate that is subject to a senior pre-petition first lien in favor of BLN.

(f) MMCM's post-petition funding will be deemed a super priority priming administrative expense under § 364(c)(1) of the Code. All claims, including those of BLN and First Texas will be subordinated to MMCM's priority position.

BASIS FOR REQUESTED RELIEF

13. The statutory requirement for obtaining post-petition credit under § 364(c) of the Code is a finding, made after notice and hearing, that the debtor-in-possession is "unable to obtain unsecured credit allowable under Section 503(b)(1) of [the Bankruptcy Code] as an administrative expense." *See In re Garland Corp.*, 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (secured credit under § 364(c)(2) is authorized, after notice and hearing, upon showing that

unsecured credit cannot be obtained); *In re Crouse Group, Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa.) (debtor seeking secured credit under § 364(c) of the Code must prove that it was unable to obtain unsecured credit pursuant to § 364(b) of the Bankruptcy Code), *modified on other grounds*, 75 B.R. 533 (Bankr. E.D. Pa. 1987).

14. Courts have articulated a three-part test to determine whether a debtor may obtain financing under § 364(c) of the Bankruptcy Code:

> A. the debtor is unable to obtain unsecured credit under § 364(b) (*i.e.*, by granting a lender administrative expense priority);
>
> B. the credit transaction is necessary to preserve the assets of the estate; and
>
> C. the terms of the transaction are fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Aqua Assocs., 123 B.R. 192, 195-96 (Bankr. E.D. Pa. 1991) (applying the above test and holding that "[o]btaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for the use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor's estate and the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere"); *In Re Ames Dep't Stores Inc.*., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (holding that financing will not be approved where "it is apparent that the purpose of the financing is to benefit a creditor rather than the estate" and that the debtor must show that it has made a reasonable effort to seek other sources of financing under §§ 364(a), 364(b) of the Bankruptcy Code). The Debtor will present evidence at the Final Hearing that will satisfy all three (3) elements of this test.

15. The evidence at the Final Hearing will show that the Debtor could not have obtained a working capital facility of the type and magnitude required in this case on an

unsecured basis. As will be shown, MMCM was not willing to make the loan on an unsecured basis.

16. To show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate "by a good faith effort that credit was not available without" the protections of §§ 364(c) or 364(d) of the Bankruptcy Code. *Bray v. Shenandoah Fed. Sav. and Loan Ass'n (In re Snowhsoe Co)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Thus, "[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable." *Id* at 1088, *see also Ames*, 115 B.R. at 40 (holding that debtor made a reasonable effort to secure financing where it approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders). Moreover, where few lenders are likely to be able and willing to extend the necessary credit to the debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom, Anchor Savings Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 120 n.4 (N.D. Ga. 1989).

17. MMCM is the Debtor's third post-petition super priority secured lender. Debtor has tried without success to find other means of financing, including seeking additional funding from BLN and First Texas. The Debtor could not obtain a post-petition credit facility to meet its working capital needs on terms more favorable than those outlined above with MMCM. The Debtor's efforts to seek necessary debtor-in-possession financing satisfy the statutory requirements of § 364(c) of the Code. *See, e.g., In re 495 Cent. Park Ave. Corp.*, 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992) (debtor seeking § 364(c) financing made acceptable attempt to obtain less onerous financing by speaking to several lenders that denied the loan request); *Ames*, 115 B.R. at 40 (approving § 364(c) financing and holding that the debtor made reasonable efforts

to obtain less onerous terms where it approached four (4) lending institutions, was rejected by two (2), and selected the least onerous financing option from the remaining two (2) lenders).

18. The entry of the proposed Interim and Final Orders will minimize disruption of the Debtor as a going concern, will preserve the going concern value of the Debtor's assets, and is in the best interest of the estate. The debtor-in-possession does not believe that it can continue to operate its business, or preserve the value of its assets, without the financing which MMCM has agreed to provide on the terms set forth herein. The debtor-in-possession faces immediate and irreparable harm if the relief sought herein is not granted pending a final hearing in this matter. Specifically, debtor-in-possession insurance premium payments are due January 1, 2011; and there exists no monies to make the payments.

19. In order to pay wages and salaries, patent fees, insurance costs and other high priorities and otherwise operate its business pending a final hearing on this motion, the debtor-in-possession desires to borrow $90,000 immediately from MMCM with additional amounts to be made available to Debtor as authorized by MMCM.

NOTICE

20. Notice of this motion will be served on: (a) the United States Trustee; (b) the Official Committee of Unsecured Creditors, and (c) counsel to the Debtors' pre-petition and proposed post-petition lender. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

REQUEST

WHEREFORE, Debtor and debtor-in-possession Greystone Pharmaceuticals, Inc. requests the entry of an Interim Order (1) authorizing it to incur secured indebtedness from MMCM, pursuant to the terms of the Order attached hereto as Exhibit A, (2) grant an emergency hearing on this Motion, and (3) granting such other and further relief as the Court deems just and proper.

Dated: December 22, 2010

Respectfully submitted,

HARRIS SHELTON HANOVER WALSH, PLLC

BY: /s/ John L. Ryder
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CERTIFICATE OF SERVICE

I certify that on December 22, 2010, a copy of the foregoing electronically filed Motion and any exhibit attached thereto was served upon the United States Trustee, the United States Attorney; all parties who have requested to receive notice in this case; and on all parties listed on the List of 20 Largest Unsecured Creditors for Greystone Pharmaceuticals, Inc. through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

/s/ John L. Ryder
John L. Ryder